

Message Text

CONFIDENTIAL

PAGE 01 BERLIN 00841 201417Z

53

ACTION EUR-25

INFO OCT-01 ISO-00 IO-14 SAJ-01 NIC-01 EURE-00 SSO-00

NSCE-00 USIE-00 INRE-00 CIAE-00 DODE-00 PM-07 H-03

INR-10 L-03 NSAE-00 NSC-07 PA-04 RSC-01 PRS-01 SP-03

SS-20 DRC-01 /102 W

----- 089813

O R 201330Z MAY 74

FM USMISSION BERLIN

TO SECSTATE WASHDC IMMEDIATE 3401

AMEMBASSY BONN IMMEDIATE

INFO AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

C O N F I D E N T I A L BERLIN 0841

E.O. 11652: GDS

TAGS: PGOV WB GE GW

SUBJECT: BRUECHMANN CASE--REPLY TO KAMMERGERICHT QUERY

REF: A) BONN 7977; B) BERLIN 805; C) BERLIN 778;)

1. SUMMARY: KAMMERGERICHT ASKED ALLIES IF IT COULD CONSIDER KARLRUHE DECISION IN DETERMINING WHETHER TO GRANT REHEARING OF BRUECKMANN CASE. UK REDRAFT (REFTEL A) SAYS IN EFFECT "YES, IF YOU WISH, BUT YOU ARE NOT BOUND BY THAT DECISION." REDRAFT APPEARS, THEREFORE, TO INVITE ESTABLISHMENT OF NEW SYSTEM BY WHICH KARLSRUHE COURT WOULD ISSUE ADVISORY OPINIONS ON BERLIN CASES WHICH WOULD THEN BE GIVEN GREAT WEIGHT BY BERLIN COURTS. THIS APPEARS INCONSISTENT WITH OUR COMMITMENT UNDER QA. WE ACCORDINGLY RECOMMEND REVISIONS OF TEXT. END SUMMARY.

2. STATEMENT IN PARA C OF UK REDRAFT THAT "IT FOLLOWS THAT THE FEDERAL CONSTITUTIONAL COURT CANNOT BE REGARDED AS HAVING JURISDICTION IN RELATION TO BERLIN AND THAT ITS JUDGMENTS CANNOT BE BINDING ON BERLIN COURTS AND AUTHORITIES" COULD IMPLY
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BERLIN 00841 201417Z

THAT BERLIN COURTS AND AUTHORITIES CAN DRAW ADVICE FROM SUCH

JUDGMENTS IN BERLIN CASES AS KARLSRUHE CHOOSES TO MAKE. THIS WOULD BE SIGNIFICANT MODIFICATION OF ALLIED POSITION THAT KARLSRUHE SHOULD NOT GIVE ADVISORY OPINIONS IN BERLIN CASES SINCE IT HAS NO RESPONSIBILITY WHATSOEVER FOR THOSE CASES. GIVEN UNDERSTANDABLE GERMAN EFFORT TO MAINTAIN LEGAL CONFORMITY BETWEEN WEST BERLIN AND FRG, WE WOULD EXPECT THAT BOTH KARLSRUHE AND BERLIN JUDGES WOULD SEIZE UPON THIS OPENING TO ESTABLISH SYSTEM WHEREBY KARLSRUHE REGULARLY REVIEWED BERLIN CASES, GAVE ITS "ADVICE" TO BERLIN, AND BERLIN COURTS THEN RATIFIED THAT ADVICE IN "INDEPENDENT" DECISION. AS REPORTED REF C, KAMMERGERICHT RECOGNIZED POSSIBILITY THAT IF IT WAS ALLOWED TO TAKE KARLSRUHE DECISION INTO ACCOUNT, SYSTEM MIGHT DEVELOP THAT WOULD BE HARDLY DISTINGUISHABLE FROM THAT IN EFFECT BETWEEN LOWER FRG COURTS AND KARLSRUHE. IT DOUBTED THAT THIS WOULD BE CONSISTENT WITH LONGSTANDING ALLIED RESERVATION, BUT RATHER THAN MAKE THAT JUDGMENT ITSELF IT REFERRED MATTER TO ALLIES FOR FORMAL DECISION.

3. OTHER MAJOR ELEMENT IN UK REDRAFT IS FINAL SENTENCE OF PARA C: "IN THE EXERCISE OF THIS RESPONSIBILITY, RECOURSE MAY NOT BE HAD TO THE DECISION OF THE FEDERAL CONSTITUTIONAL COURT OF 27 MARCH 1974 IN ANY WAY WHICH CONFLICTS WITH ABOVE." PRESUMABLY THE FINAL PHRASE WOULD BE INTERPRETED IN LIGHT OF EARLIER STATEMENT THAT KARLSRUHE DECISIONS CANNOT BE BINDING UPON BERLIN AUTHORITIES. THIS STRONGLY SUGGESTS THAT KAMMERGERICHT COULD CONSIDER THAT DECISION, ALTHOUGH NOT "BINDING", A NEW ELEMENT ("TATSACHE") THAT IT COULD REGARD AS JUSTIFICATION FOR REHEARING BRUECKMANN CASE, AND THAT IT COULD ALSO CONSIDER ADVICE GIVEN AT KARLSRUHE WHEN REACHING SUBSTANTIVE DECISION ONCE REHEARING WAS GRANTED.

4. UK REDRAFT, THEREFORE, WOULD APPEAR TO OFFER KAMMERGERICHT INVITATION TO GRANT REHEARING IN LIGHT OF ADVISORY OPINION OF KARLSRUHE COURT AND TO TAKE THAT DECISION INTO ACCOUNT ON MERITS. (IT SHOULD BE NOTED THAT FORMULATIONS IN REDRAFT IN NO WAY CONSTRAIN KAMMERGERICHT FROM ALLUDING TO KARLSRUHE DECISION.)

5. IT IS LIKELY THAT KARLSRUHE WILL TAKE ANY OPENING AS ENCOURAGEMENT TO CONTINUE REVIEWING BERLIN CASES. WE NOTE, FOR EXAMPLE, JUSTICE VON SCHLABRENDORFF'S CONVERSATION WITH CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BERLIN 00841 201417Z

AMBASSADOR REPORTED IN MEMCON AND STORIES WHICH HAVE APPEARED IN SPRINGER PRESS HERE IN LAST FEW DAYS THAT KARLSRUHE COURT HAS INFORMED FOREIGN OFFICE THAT IT HAS CERTAIN RESPONSIBILITY FOR BERLIN CASES AND THAT ALLIED RESERVATIONS SHOULD NOT BE PERMITTED TO AFFECT EXCHANGE OF DOCUMENTS BETWEEN BERLIN COURTS AND CONSTITUTIONAL COURT.

6. TO AVOID TACITLY ENCOURAGING DEVELOPMENT OF

ADVISORY-OPINION JURISDICTION FOR KARLSRUHE IN BERLIN CASES,
WE RECOMMEND THAT WE RETURN TO BRITISH MISSION
DRAFT, (REFTEL B), OR, ALTERNATIVELY, THAT FOLLOWING CHANGES BE MADE
IN DRAFT REF A:

A. DELETE CLAUSE IN SECOND SENTENCE OF PARA C "AND
THAT ITS JUDGMENTS CANNOT BE BINDING ON BERLIN COURTS AND
AUTHORITIES."

B. DELETE FROM FINAL SENTENCE "IN ANY WAY WHICH
CONFLICTS WITH THE ABOVE."KLEIN

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXTRADITION, DOCUMENTS, COURTS, TRIALS
Control Number: n/a
Copy: SINGLE
Draft Date: 20 MAY 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GarlanWA
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974BERLIN00841
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D740124-0812
From: BERLIN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740535/aaaabepc.tel
Line Count: 126
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: A) BONN 7977; B) BERLIN 805; C) BERL, IN 778;)
Review Action: RELEASED, APPROVED
Review Authority: GarlanWA
Review Comment: n/a
Review Content Flags:
Review Date: 24 APR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <24 APR 2002 by kelleyw0>; APPROVED <26 FEB 2003 by GarlanWA>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: BRUECHMANN CASE--REPLY TO KAMMERGERICHT QUERY
TAGS: PGOV, WB, GC, GE, (BRUECKMANN, INGRID)
To: STATE BONN
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005